

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

EVOL, INC.,
§
Plaintiff,
v.
§
SUPPLEMENT SERVICES, LLC d/b/a
MuscleMeds,
§
Defendant.
CIVIL ACTION NO. 3:09-cv-1839-O

**JOINT MOTION TO AMEND
THE APRIL 14, 2010 SCHEDULING ORDER**

TO THE HONORABLE COURT:

Plaintiff Evol, Inc. (“Evol”) and Defendant Supplement Services, LLC d/b/a MuscleMeds (“MuscleMeds”) (collectively, the “Parties”) file this Joint Motion to Amend the April 14, 2010 Scheduling Order (“Scheduling Order”).

1. Pursuant to the District Court's Order of Reference for Pretrial Management, filed April 13, 2010, this case was referred by the District Court to this Court for pretrial management, and this Court issued the Scheduling Order on April 14, 2010.

2. Evol is an affiliate of Dymatize Enterprises, Inc., the plaintiff in a lawsuit styled *Dymatize Enterprises, Inc. v. Maximum Human Performance, Inc.*, Cause No. 3:09-cv-0046, pending in the United States District Court for the Northern District of Texas, Dallas Division (the “’46 Lawsuit”). Musclemeds is an affiliate of Maximum Human Performance, Inc., the Defendant in the ’46 Lawsuit. The same counsel representing Evol in this matter also represent Plaintiff Dymatize Enterprises in the ’46 Lawsuit, and the same counsel representing

Musclemeds in this suit also represents Defendant Maximum Human Performance in the '46 Lawsuit.

3. The '46 Lawsuit is set for trial on Judge Reed O'Connor's four-week docket beginning **August 2, 2010**, and counsel and the parties have been ordered to be ready for trial on **two days** notice at any time during this four-week period.

4. In order to allow the Parties, and their counsel, to prepare for the August trial setting in the '46 Lawsuit the Parties respectfully request that all deadlines set forth in this Court's April 14, 2010 Scheduling Order be extended for a period of **sixty (60) days**. At the present time, no deadlines set forth in the Scheduling Order have expired.

5. More specifically, the Parties request that this Court amend the Scheduling Order to set the following deadlines:

Motions for leave to join parties to be filed by **Wednesday, September 15, 2010**.

Motions for leave to amend pleadings to be filed by **Wednesday, September 15, 2010**.

All discovery to be completed by **Wednesday, December 15, 2010**.

Motions to compel discovery to be filed by **Monday, November 8, 2010**.

Designation of expert witness and service of expert reports by party bearing burden of proof by **Tuesday, October 5, 2010**.

Designation of expert witness and service of expert reports by party not bearing burden of proof by **Monday, November 8, 2010**.

Daubert Objections to expert witnesses to be filed by **Tuesday, February 15, 2011**.

Mediation to be conducted by **Wednesday, December 29, 2010**.

Joint Estimate of Trial Length and Status Report to be filed by **Wednesday, January 5, 2011**.

Dispositive Motions to be filed by **Monday, January 17, 2011**.

Motions Not Otherwise Covered to be filed by **Monday, January 17, 2011**.

DATED: July 9, 2010.

Respectfully submitted,

/s/ Katherine B. Bandy
Casey L. Griffith
State Bar No. 24036687
Katherine B. Bandy
State Bar No. 24045445
KLEMCHUK KUBASTA LLP
8150 North Central Expressway
Suite 1150
Dallas, TX 75206
Telephone: 214/367-6000
Telecopy: 214/764-6673

Attorneys for Plaintiff EVOL, Inc.

/s/ Prescott W. Smith
Craig W. Weinlein
State Bar No. 21095500
Prescott W. Smith
State Bar No. 24013534
CARRINGTON, COLEMAN, SLOMAN
& BLUMENTHAL, L.L.P.
901 Main Street, Suite 5500
Dallas, TX 75202-3767
Telephone: 214/855-3000
Telecopy: 214/855-1333
cweinlein@ccsb.com
psmith@ccsb.com

Robert J. Schoenberg
RIKER DANZIG SCHERER HYLAND PERRETTI, LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962-1981
Telephone: 973/451-8511
Telecopy: 973/451-8604

*Attorneys for Defendant Supplement Services, LLC,
d/b/a MuscleMeds*